

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION.

 \mathbf{y}_i

DIRECT MARKETING CONCEPTS, INC., et al.,

Defendants.

CIVIL ACTION NO. 04-CV-11136GAO

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO THE FEDERAL TRADE COMMISSION’S MOTION TO MODIFY
THE COURT’S PRELIMINARY INJUNCTION AND APPOINT A RECEIVER**

The defendants Direct Marketing Concepts, Inc., ITV Direct, and Donald Barrett (collectively the “DMC Defendants”) hereby move that the Court grant them leave to serve and file a Supplemental Memorandum and accompanying affidavits and exhibits in Opposition to the Federal Trade Commission’s (“FTC”) Motion to Modify the Court’s Preliminary Injunction and Appoint a Receiver.

The FTC filed its Motion for Modification of the Preliminary Injunction on May 26, 2005. The DMC Defendants filed their Opposition to the FTC's Motion for Modification on June 9, 2005. The FTC filed its Reply Memorandum on June 24, 2005. The FTC filed a Supplemental Memorandum in Support of its Motion for Modification on August 25, 2005.

The DMC Defendants’ Supplemental Memorandum provides the Court with the scientific support for the health care supplements (Sea Vegg and Flex Protex) that are the subject of the FTC’s motion for a receiver. This scientific material will assist the Court in evaluating the FTC’s claim that the DMC Defendants’ advertisements are misleading and lack scientific support. The Supplemental Memorandum also addresses the incorrect and misleading assertions,

mischaracterization of the facts in the record, and the inappropriate arguments contained in the Plaintiff's Supplemental Memorandum in Support of its Motion and the effect of a receiver on the defendants' commercial speech rights under the First Amendment.

WHEREFORE, the DMC Defendants respectfully request that the Motion be allowed and that the DMC Defendants be granted leave to file a Supplemental Memorandum in Opposition to FTC's Motion to Modify the Court's Preliminary Injunction and Appoint a Receiver.

Respectfully submitted,
DIRECT MARKETING CONCEPTS, INC., ITV
DIRECT, INC., AND DONALD W. BARRETT

By their attorney(s),

/s/ Christopher Robertson

Peter S. Brooks, BBO #058980

Christopher F. Robertson, BBO #642094

Susan W. Gelwick, BBO #567115

SEYFARTH SHAW LLP

Two Seaport Lane, Suite 300

Boston, MA 02210-2028

Telephone: (617) 946-4800

Telecopier: (617) 946-4801

Dated: September 29, 2005

LOCAL RULE 7.1 CERTIFICATION

I, Christopher F. Robertson, counsel for DMC Defendants, hereby certify that I have conferred with opposing counsel, and counsel agreed to consent to filing of the supplemental memoranda by FTC and DMC Defendants.

/s/ Christopher Robertson

Christopher F. Robertson